

August 30, 2017

Via ECFS

Marlene H. Dortch Secretary Federal Communications Commission 445 12th Street S.W. Washington, D.C. 20554

Re: Reply Comments, In the Matter of Restoring Internet Freedom, WC Docket No. 17-108

Dear Ms. Dortch:

While there are a number of serious issues to be considered in this docket, yet it seems that the biggest news, other than that the docket exists at all, has been the total number of comments made to the FCC. There is absolutely no doubt that we should cheer when more people are paying attention to what their government is doing, and trying to understand the policy issues that may have an effect on their lives. However, when the volume of comments has turned into a game we need to take stock of what is really going on.

Accountable to Congress, the FCC is to maintain standards for communications and media, essentially as an agency of specialized knowledge and ability in the communications and media space. The comment process has traditionally served as a means for the agency to benefit, in an open and public way, from a broad range of expertise and insights all to be better at the job they do. Of course, under the Administrative Procedure Act, the agency is mandated to provide the public this opportunity and must take such comments into account. But taking those comments into account means responding to actual arguments, not to simple political reactions. The logical conclusion is then that if thousands or millions of identical comments are sent in bulk with the same argument then the appropriate response is to address those with a single reply. But the comments in this proceeding have been called into question because analysis after analysis calls into question a great many of them.

Sadly, some seem intent on turning FCC comment opportunity into a silly game. The last round of comments about Title II led to the pro-Title II crowd counting every comment that was filed and claiming them all as supporting their position despite the fact that large portions actually opposed their position. Sophistry at best, but more appropriately described as a tale of whole cloth. Such antics are mere

reactionary political tricks, thinly veiled bullying, just like the protests, the vulgar signs, orchestrated protests and showing up at the FCC Chairman's house disrupting his family and neighbors on Mother's Day. But this time ongoing fact-based analysis of the comments has been particularly disturbing.

As was reported in Recode, "The FCC is being flooded by fake, vicious comments as it begins debating net neutrality" (https://www.recode.net/2017/5/10/15612864/fcc-net-neutrality-bots-spam-comments-online-government-rules-ajit-pai). And related as reported by Fox Business, "John Oliver's Net Neutrality Campaign Filled With Bots, Fake Comments, Racist Attacks Against FCC Chairman" and at the Daily Caller, "John Oliver's Net Neutrality Movement Rife With Fraudsters And Racists" (http://dailycaller.com/2017/05/10/john-olivers-net-neutrality-movement-rife-with-fraudsters-and-racists/)

A detailed analysis by Consumer Action for a Strong Economy, of the comments filed by June 20 of this year found that at the time of the analysis there were five million comments filed. At that point, about 65 percent of the comments supported the repeal of Title II rules. A deeper study of the comments revealed that six percent were from international filers including France, Germany and Russia. Further, 12 percent did not include a physical address as required. More than 13 percent of the comments were as short, or shorter than a tweet, 140 characters. Not exactly "expert" analysis, perhaps more appropriately characterized as a political expression to be aimed at Congress.

Further, many of the generic comments have been generated via pop up screens on pornography sites that require users to fill out the form to get to the content of the site. It is a fair bet to that those "filing comments" were not real concerned about public policy or studying the issues. Certainly no one can credibly argue that these sorts of comments or mere expressions of political reactions should "count" even if such a count was relevant to the process. Such gaming of a system is not a legitimate expression of concern but rather is merely a cynical, engineered political attack.

Just today, a further study conducted by data analytics company Emprata was released that has actually exposed the mass comment process further. The study reports that while 21.766 million comments were filed, that 7.75 million appear to be attributed to FakeMailGenerator.com. That is to say that 36 percent of the comments were fake. Further, 9.93 million comments were duplicative.

The FCC must improve the comment process to address some of this blatant political gaming of the system. The FCC cannot be an agency that decides how to be an expert and what its expert opinion may be based on some number of carbon copy comments generated as fake mail, as a means for people to access pornography or from foreign jurisdictions. Some have found the process so concerning they have even suggested a government investigation into these comments.

As for those who tried to file a real objection, those might be best directed a political body designed to answer the will of the people, that is Congress. But if some tried to honestly express real concern about any FCC action, then it does beg the question if we should have regulations that are so difficult to understand that the average American must turn to rote comments to comment at all. Time for a gut check. Light touch, sensible regulations worked and will continue to work.

Truly, this is an issue that Congress must address. Congress is designed with the intent that it is the institution to reflect the will of the people. The FCC's role has no such intent and the

FCC no such design. We cannot afford to risk our future of health, communications, entertainment, work and education to those preferring social experiments above social success. Why would anyone even consider letting this go to court again, guaranteeing uncertainty for many more years while consumers suffer. Already the uncertainty is causing considerable damage.

As Roslyn Layton, a U.S. News and World report contributor has written,

"The reality is that Title II ignores and hurts underserved communities. It prohibits a free market for data which allows these individuals to enjoy free and reduced price content and offerings. It has cost the nation some \$35 billion annually in lost participation from content-side actors and advertisers which would otherwise support internet access to these groups. It is also responsible for deterring the creation of some 750,000 jobs.

These lost investments are a detrimental blow to seniors, low-income and minority communities. We all know that to get more of a good or service, it needs to be invested in to achieve improvement and expansion. The same goes for broadband services. In order for the U.S. to continue improving its broadband networks, especially with regard to expanding into unserved as well as underserved communities, this industry needs investments to be coming in – not leaving. But through the heavy-handed overregulation Title II imposes, companies were afraid and/or less motivated to invest. The result? Diminished achievement in building out America's broadband services.

This, of course, effects millions of Americans, but perhaps none more than poor, minority and senior populations. Low-income and minority families depend on broadband, often via mobile devices, to reach socially-beneficial digital services that can improve their lives. Think applications that offer services like networking, education and management of financial resources. For seniors, it's equally destructive as limited broadband prevents these Americans – 48 million in 2015 – from accessing tools to monitor their health or communicate in real-time when there is an accident or emergency."

Congress is the only entity that can instill the certainty, the permanence of supportive public policy for all consumers, clearly defining the authority of the FCC and the breadth of enforcement of it, or the FTC, has to enforce the principles of a free internet. Congress must clarify that the FCC must modernize its thinking. Clinging to 80-year-old constructs of regulation is lazy and unworthy in an industry defined by innovation, and in a country that used to take pride in leading and finding new frontiers.

Congress must get to work to do what is right for the American people and end the ongoing political games. Congress needs to do its job and draft laws knowing that regulators will bend and twist their language to seek greater and greater authority for actions unmoored from intention. Legislative proposal drafting needs to consider this and appropriately draft language that does not let the administrative state run amok. And then the FCC must faithfully apply the law, developing the practical applications, using its expertise.